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10/706,570

11/12/2003

Michael A. Masini

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EXAMINER

PETRIK, KARI KRISTEN

ART UNIT

PAPER NUMBER

3743

DATE MAILED: 07/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

~~10/072,717~~ 10/706,570

Applicant(s)

MASINI, MICHAEL A.

Examiner

Kari Petrik

Art Unit

3743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 April 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11-42 is/are pending in the application.
- 4a) Of the above claim(s) 13, 19, 29-42 and 1418 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11, 12, 15-17 and 20-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 2/27/04, 5/15/06.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of Group 1, Species 1 in the reply filed on 4/17/2006 is acknowledged. The traversal is on the ground(s) that the sheet material does not constitute an undue burden on the part of the examiner is not found persuasive. Claims 11, 12, 15-17, and 20-28 are being examined as reading on the elected species.

The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claim 11, 12, 15-17, and 20-28 are rejected under 35 U.S.C. 102(b) as being anticipated by Bush (US Patent 2,897,961).

4. Regarding claim 11, Bush discloses a packaging for a bandage comprising first and second removable sheets (17 and 18) extending beyond the peripheral edge of the bandage and joined so that the bandage is contained between the two sheets and wherein sheet (17) is in direct contact with the adhesive (13) on the patient-contacting surface.

5. Regarding claim 12, Bush discloses the sheets are made of paper (column 3, lines 23-40).

6. Regarding claim 13, one of the sheets includes a tab (28) to assist removal.
7. Regarding claim 16, Bush discloses a bandage portion comprising a patient-contacting surface with an adhesive (13), a back surface, and a peripheral edge, and a packaging portion including first and second removable sheets (17 and 18) peripherally joined so that the bandage is contained there between.
8. Regarding claim 17, note the rejection of claim 5.
9. Regarding claim 20, note the rejection of claim 6.
10. Regarding claim 21, the sheets are peripherally joined with an adhesive (column 53, lines 55-56).
11. Regarding claim 22, the bandage portion includes a flexible backing layer (12) and an absorbent layer (14) bonded to the backing layer.
12. Regarding claim 23, the flexible backing layer extends beyond the absorbent layer (column 3, lines 1-5) and includes an adhesive (13).
13. Regarding claim 24, the bandage includes a non-stick layer on the absorbent layer (column 2, line 60- column 3, line 5).
14. Regarding claim 25, the flexible backing layer is fluid-impermeable (column 5, lines 28-34).
15. Regarding claim 26, the adhesive is disposed on the flexible backing layer and surrounds the absorbent layer to form an island-type bandage portion (Figure 7).
16. Regarding claim 27, Bush discloses a method of applying a bandage comprising removing the first sheet to expose the patient-contacting surface, applying the bandage,

and removing the other sheet from the back surface of the bandage portion (column 4, lines 40-75).

17. Regarding claim 28, note the rejection of claims 11 and 16.

Double Patenting

18. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

19. Claims 11, 12, 15-17, and 17-28 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over of U.S. Patent No. 6,664,435 (claims 1 and 3), U.S. Patent No. 6,599,262 (claim 9), U.S. Patent No. 5,833,646 (claims 4 and 7), U.S. Patent No. 5,643,189 (claim 1), and U.S. Patent No. 6,225,523 (claims 7 and 8) in view of Bush (US Patent 2,897,961).

20. The '435 patent substantially discloses the claimed invention including a bandage having a front surface with an adhesive, a back surface, and an absorbent layer bonded to the flexible backing layer. The '435 patent does not disclose packaging for the bandage comprising two removable, adhesively joined sheets. However, Bush teaches packaging for an adhesive bandage comprising two removable sheet extending beyond the peripheral edge of the bandage that are joined by adhesive so that the bandage is contained between the two removable sheets until use. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the bandage disclosed by the '435 patent having packaging, as taught by Bush, to keep the bandage sterile until use.

21. The same reasoning applies for patents '523, '189, '646, and '262.

22. Claims 11, 12, 15-17, and 17-28 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 and 19 of copending Application No. 10/872,717 in view of Bush (US Patent 2,897,961). Note the double patenting rejection of the '435 patent above. The same reasoning applies.

This is a provisional obviousness-type double patenting rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kari Petrik whose telephone number is 571-272-8057. The examiner can normally be reached on M-Th 7-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on 571-272-4791. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Kari Petrik
Examiner
Art Unit 3743

KKP

Henry Bennett
Supervisory Patent Examiner
Group 3700